

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal Case No.: 78 FEL 4160
)	
SANTAE A. TRIBBLE)	Judge Laura A. Cordero

CERTIFICATE OF ACTUAL INNOCENCE

This matter comes before the Court on Santae A. Tribble's Motion and Supplemental Motion to Vacate Convictions and Dismiss the Indictment With Prejudice Under the Innocence Protection Act on the Grounds of Actual Innocence, the Government's Response, Mr. Tribble's Reply to the Government's Response and Request for a Certificate of Innocence and the United States' Response to Defendant's Reply and Request for a Certificate of Innocence.

The parties agree on the following facts. John McCormick was murdered on July 26, 1978, at approximately 3:00 a.m. on the front porch of his home at 1507 28th Place, S.E., with a .32 caliber gun, in the course of an armed robbery during which the perpetrator wore a stocking mask. Shortly after the crime, a police dog located a stocking mask near the scene of the crime. Santae Tribble and Cleveland Wright were charged with the felony murder and armed robbery of Mr. McCormick on February 14, 1979. However, their trials were severed. Mr. Tribble was prosecuted by the Government and tried before a jury in this Court on July 17, 1980. At the trial, the jury heard testimony from witnesses for both the Government and defense. Among the Government's witnesses was FBI Special Agent James Hilverda, who testified regarding hairs found in this stocking mask. Agent Hilverda testified that the hairs found in the stocking mask "matched in all microscopic characteristics" Mr. Tribble's hair. This evidence was critical to the jury's decision; during deliberations, the jury sent a note asking which stocking was recovered

from the alley near the crime scene. One stocking had been retrieved from Mr. Wright's bedroom by the police and another stocking mask had been found at the scene. The jury did not submit any other notes in this case. On January 21, 1980, the jury returned verdicts of guilty of felony murder while armed and armed robbery of Mr. McCormick. Mr. Tribble was sentenced to twenty years to life in prison. He was incarcerated for more than twenty-seven years for these offenses.

Pursuant to the Innocence Protection Act, D.C. Code § 22-4131, *et seq.*, on August 31, 2011, this Court granted Mr. Tribble's application for post-conviction DNA testing of hair from a stocking mask worn by the murderer and used to convict Mr. Tribble. The results of that mitochondrial DNA testing exclude Mr. Tribble and Mr. Wright as the source of the hairs in the stocking mask to a scientific certainty. On May 14, 2012, this Court granted Mr. Tribble's unopposed motion for an order vacating his conviction and dismissing the indictment with prejudice under the Innocence Protection Act. On May 16, 2012, it issued an Amended Order to specify clearly that the convictions for armed robbery and for felony murder while armed were both vacated.

Mr. Tribble further requests that the Court enter a Certificate of Actual Innocence. Specifically, Mr. Tribble asserts, in his January 18, 2012 Motion to Vacate Conviction and Dismiss Indictment With Prejudice on the Grounds of Actual Innocence Under the Innocence Protection Act ("January 18, 2012 Motion"), filed January 18, 2012 and in his June 15, 2012 Reply to the Government's Response and Request for a Certificate of Innocence, that the Government's witnesses at trial were not credible, that he presented several alibi witnesses at trial, and that evidence relating to the sale of a .32 caliber gun and ammunition found in Mr.

Tribble's home does not connect him to this crime. *See, e.g.*, Mot. 14-25, 26-30, Jan. 18, 2012; Reply 6-19, 30, June 15, 2012.

The Government's April 27, 2012 Response asserts that "significant evidence besides the scientific hair evidence implicated the defendant in the murder of John McCormick." Gov't Resp. 21, Apr. 27, 2012. Specifically, the April 27, 2012 Response describes testimony regarding admissions made by Mr. Tribble to Ms. B.J. Phillips and Mr. Ronald Willis, Mr. Tribble's initial denial and subsequent admission regarding the sale of a .32 caliber gun within days of the murder, and ballistics evidence found in Mr. Tribble's and Mr. Wright's homes, including .32 caliber ammunition, that Mr. Tribble initially maintained belonged to his father but later acknowledged that he had received from Mr. Wright. *Id.* 9-15, 19-22.

On July 16, 2012, the Government filed a Response to Defendant's Reply and Request for a Certificate of Innocence ("July 16, 2012 Response") stating that "[g]iven the evidence implicating the defendant, as set forth in the United States' April 27 Response, the United States declines to affirmatively join defendant's Request for a Certificate of Innocence." Gov't Resp. 1, July 16, 2012. The July 16, 2012 Response further states that, "[h]owever, because the hair evidence that implicated defendant now has been thoroughly discredited, and because the hair evidence was a key component of the government's case at trial, the United States does not oppose the Court's granting defendant's request for a Certificate of Innocence." *Id.* The parties therefore disagree on the nature and quality of evidence, other than the hair evidence, presented at trial.

Pursuant to the Innocence Protection Act, "[a] person convicted of a criminal offense in the Superior Court of the District of Columbia may move the court to vacate a conviction or to grant a new trial on grounds of actual innocence based on new evidence." D.C. Code § 22-

4135(a). For a conviction to be vacated and a criminal charge dismissed with prejudice under this Act, the Court must conclude, by clear and convincing evidence, that the petitioner is “actually innocent” of the crime. D.C. Code § 22-4135(g). In assessing a petitioner’s claim, the Court “may consider any relevant evidence,” but shall consider:

- (A) The new evidence;
- (B) How the new evidence demonstrates actual innocence;
- (C) Why the new evidence is not cumulative or impeaching; [and]
- (D) If the conviction resulted from a trial, and if the movant asserted a theory of defense inconsistent with the current claim of innocence, the specific reason the movant asserted an inconsistent theory at trial.

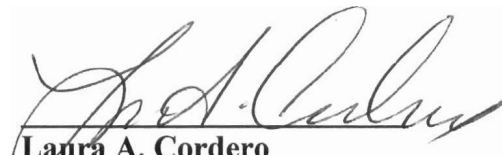
Id. § 22-4135(g)(1)(A-D).

Here, the Government’s theory of the case at trial was that Mr. Tribble fatally shot Mr. McCormick. However, in light of the parties’ concession that new DNA evidence conclusively shows that the hair found in the stocking cap was not Mr. Tribble’s, the Court finds by clear and convincing evidence that he did not commit the crimes he was convicted of at trial. This new evidence is neither cumulative nor impeaching, as DNA testing was not available at the time of Mr. Tribble’s trial. Mr. Tribble did not assert a different theory of defense at trial. To the contrary, Mr. Tribble has steadfastly maintained his innocence for thirty-four years. Therefore, based on the undisputed facts in this case, the Court concludes by clear and convincing evidence that Mr. Tribble is actually innocent of felony murder while armed and armed robbery in this case.

Wherefore, it is this 14th day of December, 2012 hereby:

ORDERED, that based on the undisputed evidence in this case, including the new scientific evidence, Mr. Tribble has proved by clear and convincing evidence that he is actually innocent of the charges of armed robbery and felony murder while armed of Mr. McCormick of which he was convicted in this case.

SO ORDERED.



Laura A. Cordero
Associate Judge
(Signed in Chambers)

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